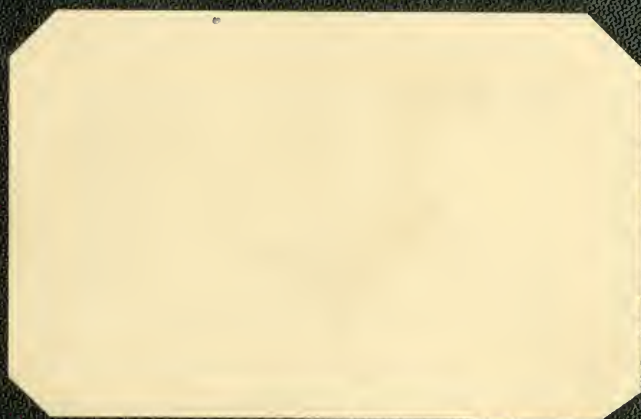


E

480

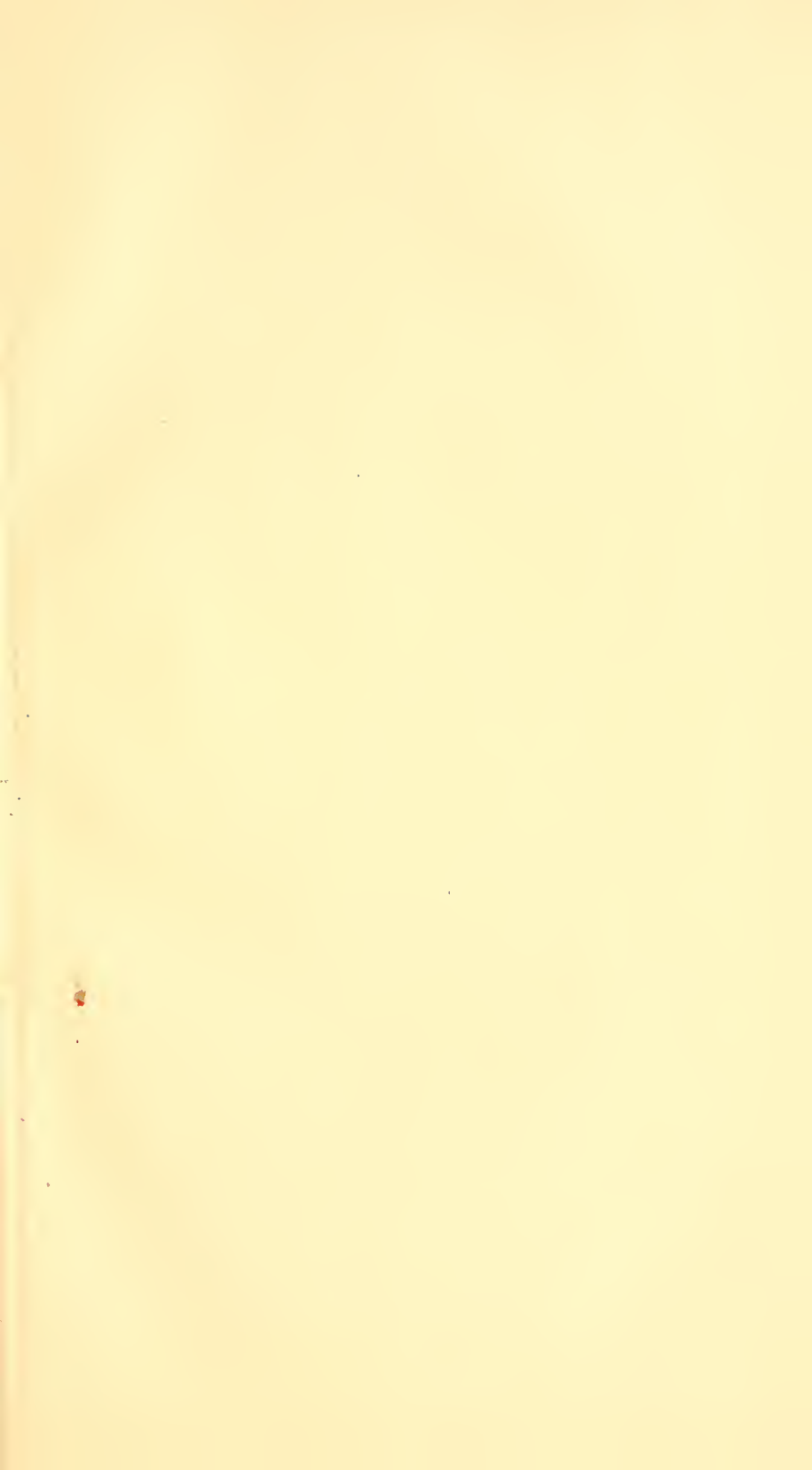
M25





Class E 480

Book .M 25





1

368
720

SPEECH
OF
HON. ROBERT MALLORY,
OF KENTUCKY,
ON THE
CONFISCATION OF PROPERTY.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, MAY 21, 1862.

The bills to confiscate the property and free from servitude the slaves of rebels being under consideration, Mr. MALLORY addressed the House as follows:

MR. SPEAKER: I dislike very much to trespass upon the attention of the House at so late an hour of the session, and would not do so were it not that my connection with the committee to which this whole subject of confiscation was referred, renders it necessary that I should, at some time, present before this body my convictions in regard to this great and exciting question.

In the few remarks I intend to submit—I shall be very brief—I will not undertake to follow the argument indulged in by the gentleman from New York who has recently occupied the floor, [Mr. LANSING.] From the scope and tenor of that gentleman's speech, I take it for granted he belongs to a party in this House which is very limited in its numbers. He has announced his solemn conviction that this war must and ought to be waged against the rebels of the South for the extermination of the institution of slavery.

MR. LANSING. Allow me to correct the gentleman. That is not the position I laid down. I laid down the position that we should emancipate the slaves of the rebels as a means of prosecuting this war.

MR. MALLORY. I understood the gentleman to assert distinctly the proposition that under the Constitution of the United States, in the reduction of this wonton, unprovoked, and wicked rebellion, this Government had the right to resort to any and every means which it might think necessary to secure that end. I understood that to be the position which the gentleman assumed, and the whole scope and line of his argument appeared to be intended to try to prove that slavery had brought on this war; that there never can be permanent peace in this country as long as that institution exists, and that if the Government of the United States should come to that conclusion, it possessed and ought to exercise the power to exterminate slavery.

I believe, at least I hope, that opinion is shared by few Representatives on this floor. I am not to be led into an argument based upon the supposition that such is the opinion and purpose of a large portion of the members of this House. I will merely protest against and denounce it; I shall assume that it is not, and in the few remarks which I shall submit, I will undertake to confine myself to the legitimate subject before the House, and discuss the confiscation bills reported by the select committee of seven.

I cannot concur in the opinion expressed by many gentlemen for whom I entertain great respect, and whose legal opinions I have been taught to consider correct, that there is in the Constitution of the United States no inhibition on Congress to forfeit the estates of persons who have been guilty of the crime of treason and thereof convicted and attainted. I approach this subject with much diffidence. I do not profess to be so skilled and learned in intricate constitutional questions as many other members on this floor. I am a plain, blunt, man, and in that spirit approach every subject which I undertake to discuss. But I think there are great leading provisions of the Constitution of the United States so plain in their import that a wayfaring man, though a fool, cannot err in their construction and true interpretation. I consider that provision which applies to the subject of forfeiture for treason one of these. Unlike the gentleman from Missouri, [Mr. NOELL,] I have been taught to believe that the crime of treason is defined in the Constitution of the United States, and that it is defined so clearly and distinctly that no man can misconceive and misunderstand it. I have been taught that it consists "in levying war against the United States, and in adhering to their enemies, giving them aid and comfort." I have also been taught that the Constitution plainly and unequivocally prohibits the forfeiture of the property of an attainted traitor, except during his lifetime. This is the view in which I have been educated. It is, I think, the view of this subject entertained and expressed by the framers of the Constitution.

The crime of treason is distinctly defined, and, as has been frequently said, no punishment is prescribed for it in the Constitution. That is left for the action of Congress. You are told by the Constitution what treason is, but you are not told which shall be its punishment. In that lies the discretion of Congress. You can declare by your law that the traitor shall suffer death; that he shall be imprisoned for life or a term of years. You can decree by your law that he shall be banished from the country, and deprived of the protection of the Government he has outraged and attempted to subvert. You can do all this; but by the plain provision of the Constitution, when you approach his property and attempt to punish him by confiscating it, you are expressly forbidden to impose the penalty of forfeiture, except during the life of the person attainted. This prohibition, emphatically expressed in the Constitution, applies to the crime of treason by whatever name it may be called. Can you call it murder, and then, as a consequence of conviction and judgment, decree that the estate of the murderer shall be forfeited forever? I apprehend not. This crime is so distinctly described in the Constitution of the United States that when it is committed, call it by any name you please, it is still the crime of treason. You cannot say it is the simple offense of rebellion against the Government of the United States if the act comes within the constitutional definition of treason. You cannot ignore the crime of treason by calling the act rebellion.

If you call an act rebellion, or resistance to the laws of the United

States, and punish it by fine, or confiscation, or forfeiture, when you analyze it and find that it consists in "levying war against the United States, adhering to their enemies, giving them aid and comfort," you are forced to the conclusion that whatever may be the *name* given the act, the *crime* is *treason*, and you are at once confronted and controlled in your effort to punish it by all the provisions and limitations of the Constitution concerning treason. No attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

This may be an old-fashioned view of the subject. It may not suit the new-fangled notions which of late prevail in this country, but it is my conviction, as solemnly and as fixedly settled in my mind as any great truth inculcated by the fathers of the Republic, and from which I cannot be induced to wander and depart.

I am opposed to the bills reported by the special committee, because this great constitutional fact, limitation, and inhibition, is overlooked and disregarded by them, and because I cannot see anywhere in the bills the slightest respect to that constitutional limitation of our power.

Every forfeiture decreed by this bill, all the confiscation—if you choose to call it by that name—provided for in it, is so provided because the party whose property is to be confiscated has been guilty of the crime of treason against the Government of the United States, and the provisions of this bill are that such property shall be seized by the Government of the United States and sold, and the proceeds put into the Treasury of the United States, as the property of the Government, in fee simple and forever.

I know, Mr. Speaker, an effort has been made by many ingenious, if not learned men, to evade this limitation and restriction by saying you do not attain the individual guilty of this crime, that you do not pursue the person who has perpetrated it, that you leave him to go at large, institute no trial, do not bring him to judgment and conviction, but institute what gentlemen call a proceeding *in rem* against his property. It is gravely argued that by doing this and letting the offender go at large, you have the right to attach his property and forfeit it for the crime of treason, when you would not have that right if you pursued the party to conviction and attainder. I never can be brought to sanction any such evasion of the Constitution of the United States as this. I can never, from the learning I have had instilled into me in relation to the meaning of this very instrument, be brought to sanction a proceeding which, ignoring the trial and personal punishment of a party guilty of an offence, jumps over the proceeding against him, and takes hold of his property, so that you can punish him through that, and that alone. One of the greatest bulwarks of that Constitution, if not the greatest, is the clause in which is incorporated that provision of the Magna Charta, that no man shall be deprived of his life, liberty, or property, except by due process of law.

Is this great provision regarded in these proceedings *in rem*? Why is the party punished by the forfeiture of his property? Because he is guilty of treason, or, as the learned gentleman from Massachusetts [Mr. Eliot] calls it, rebellion. He is punished by having his property taken from him, because he has been guilty of rebellion against the Government of the United States; that is, bearing arms and levying war against the Government of the United States. It is not rebellion, sir, it is treason; the Constitution compels you to call it treason; it is so necessarily. But, says he, and say others, we can ignore the crime; we can let the offender go un-

punished in his person ; we can disregard the necessity for his conviction of crime, and, by this proceeding *in rem*, by seizing his property, punish him for an offence of which he has never been judicially found guilty. You say that it is proper to punish him for treason, or for rebellion, if you choose, and you are guilty of the enormous and outrageous wrong of punishing a man, by depriving him of all his property, before you have found him guilty in a court of justice of the crime for which you punish him. That, I suppose, in the the opinion of these gentlemen, is the "due process of law" contemplated by the Constitution of the United States. If it be, I have greatly misconceived that instrument, and the rights secured to us by it.

Now, sir, I have always heard that one of the most infamous and damnable things that could be done was to hang a man and then try him for the offence for which you hang him. Is there any justice in that? But the enormity of such a proceeding is excelled by that of the measures which the distinguished chairman of the committee on confiscation proposes to this House; for in this bill he proposes to take a man's property and forfeit it to the Government without first trying him and proving him guilty of the crime for which he is thus punished, and he is never to be afforded a trial for the offence. The gentleman from Massachusetts and my distinguished friend from Missouri [Mr. NOELL] say this is the "due process of law." If it be, it is such a law as could only be enacted by the vilest despot that ever reigned on the face of God's earth. Our fathers knew nothing of a proceeding of this sort. They were not in the habit of resorting to this hocus pocus, this ground and lofty tumbling, this prestidigitation, for the purpose of getting at the means of punishing a citizen for a crime of which he has never been convicted. The usual practice was—and God grant that we may get back again to that old custom—to arraign him, to confront him with his accuser and witnesses, try him, find him guilty of the offence, and then punish him in his person or in his pocket, or both. The sooner we come back to that old practice, the sooner we acknowledge by our legislation in this Hall the true doctrine and the true teaching of the Constitution of the United States, the sooner will we become the respected body which the Congress of the United States ought to be in the estimation of the people of this country and of the world.

Mr. Speaker, it was not my intention to have pursued this branch of the subject even so far as this. I am candid and free to admit that, in the present juncture of public affairs, with great and imminent dangers impending over and surrounding us, I deem it inexpedient to adopt any act of confiscation or forfeiture of the estates of rebels engaged in this wicked and unprovoked rebellion. I, sir, have no sympathy with that rebellion.

Mr. BINGHAM. Will the gentleman allow me to make an inquiry of him?

Mr. MALLORY. I would rather that the gentleman would allow me to go on with my remarks without interruption.

Mr. BINGHAM. I have no desire to interrupt the line of the gentleman's remarks. I simply wanted to make an inquiry for my own information.

Mr. MALLORY. I will hear the gentleman with a great deal of pleasure.

Mr. BINGHAM. I desire to inquire of the gentleman whether he has ever seen in any commentary upon the Constitution, or in anything connected with the debates in the national convention, or in any of the stat-

tutes, any intimation that the word "forfeiture" in the Constitution is necessarily limited to estates?

Mr. MALLORY. Mr. Speaker, in the investigation of this subject, when I found that the Constitution of the United States limited our powers in punishing the crime of treason, so far as the property of the person was concerned, to forfeiture during the life of the party, I inquired what was meant by "forfeiture." I found, on searching the English law, that forfeiture means taking (as a punishment for crime) by the king or Government any property that a man owns, and I suppose that the word forfeiture in the Constitution meant and was intended to mean nothing else; that it applied to property in estate and could apply to nothing else. I did not suppose that it had entered into the imagination of any man to conceive that it had any reference to anything else than the estate of the person attainted. What else could it have been intended to mean? Does it mean that the party attainted of treason should not forfeit his life except during the life of the person so attainted?

Mr. BINGHAM. I am perfectly willing to answer the gentleman's question if he desires me to do so.

Mr. MALLORY. I will hear the gentleman with pleasure.

Mr. BINGHAM. I undertake to say that a careful examination of the original draft of the Constitution will lead the gentleman himself to the conclusion that the terms "corruption of blood" and "forfeiture," as used in that Constitution, are convertible terms, and that the word "estate" is neither expressed nor implied in that connection.

Mr. MALLORY. Mr. Speaker, I have looked in the books, not perhaps to the same extent, not perhaps with the same research, not perhaps with the same learning and natural acumen as the gentleman, but I have looked at the books with some care in relation to this matter, and that examination has led my mind to the conclusion that corruption of blood and forfeiture were two different things. That is my understanding. I may be very much in error. If I am, I will most cheerfully stand corrected by any learned gentleman upon this floor. I believe that that is the common law. I understand that is the interpretation, not only of common lawyers, but even of uncommon lawyers.

Mr. BINGHAM. Will the gentleman allow me to inquire what the term "corruption of blood" means, if it ever had any significance at all except the forfeiture of one right or another?

Mr. MALLORY. The words "corruption of blood?"

Mr. BINGHAM. Yes, sir.

Mr. MALLORY. I have always understood that by "corruption of blood," which is the result of attainder, all power of transmitting through the blood any estate or inheritance was cut off; that inheritance could *not* be derived by his descendants through one whose blood was corrupted by attainder of treason. This is my understanding of the English law.

Mr. BINGHAM. I would inquire if that is not the forfeiture of a right that pertains to the citizen?

Mr. MALLORY. Unquestionably; the right of inheritance pertains to all citizens, and that right is forfeited and lost by the descendants and heirs of the person whose blood is corrupted, and not by the criminal. It is no loss on his part. It was this corruption of the blood and forfeiture which were worked by attainder of treason by the laws of England, that the provision of our Constitution, on which I have been commenting, was intended to prohibit.

Mr. Speaker, I wish to proceed, in the discussion of this question, to other topics. I wish to review the policy of these measures, and the scope and purpose of those who are its advocates, or at least of a large number of those who are its advocates upon this floor. The learned gentleman from Massachusetts, (Mr. ELIOT,) the chairman of the committee on confiscation, has reported to this House two bills upon the subject. One of them, as he thinks, entirely ignores the subject of slavery; it makes no provision in relation to slaves *eo nomine*; it simply provides that all the property of certain classes, named in the bill, shall be forfeited to the Government of the United States, because of the commission by them of the crime of rebellion, or, as I call it, treason.

Mr. THOMAS, of Massachusetts. Will the gentleman from Kentucky allow me to interrupt him?

Mr. MALLORY. Certainly.

Mr. THOMAS, of Massachusetts. I beg leave to call the attention of the gentleman from Kentucky to the fact that this bill proposes to confiscate the property of thousands who have never committed any crime.

Mr. MALLORY. I am coming to that, sir. That was what I was about to attempt to show. I was about to remark that the first portion of the bill confined its operation to the classes I have spoken of. The second, or some other section of the bill, provides that after the President of the United States has issued his proclamation to the inhabitants of a rebellious State, ordering them to lay down their arms and submit to the Government and laws of the Union, the property of every man who does not obey that proclamation shall become forfeited to the Government of the United States. I contend, with my learned friend from Massachusetts, that this provision of the bill is sweeping and universal, and that, from the very necessities of the case, it embraces all men, of every degree of wealth and character. Do you tell me that if the President of the United States determines to issue his solemn proclamation (and he does issue his proclamation very solemnly) ordering the people of Alabama at the present time to lay down their arms under the penalty not only of losing their lives if they persevere in their rebellion, but also of losing their property, that proclamation can ever be expected to have any effect within the limits of that State? Do you not know that a power hostile to the Government of the United States has control and authority within its limits? Do you believe that by any agency that you or the President can devise, this proclamation can ever find its way into the State of Alabama? And if you were so lucky as to penetrate the bristling lines of the enemy, and to cause the proclamation to be read at every court-house and cross-road in the State of Alabama, do you believe that even the loyal men, those who have reluctantly and unwillingly engaged in this rebellion, those who would willingly lay down their arms (as I believe hundreds in that State would) and aid the Government of the United States in asserting the supremacy of the laws and of the Constitution, do you believe that one of those men has the power to obey that proclamation? History tells us of a lawgiver who hung up his laws so high that they could not be read, and yet required them to be obeyed. It seems to me that the provisions of this act assimilate, in their character of justice and mercy, to the conduct of that lawgiver.

But, sir, this bill, as the gentleman from Massachusetts [Mr. ELIOT] intended to show, is not restricted to other than slave property. I suggest to that distinguished gentleman, that by the provisions of the bill itself,

which forfeits all the property of those persons described in it, slaves are included as property, as every other description of property is; that the effect and result of his bill will be that slaves will be proceeded against *in rem*, as every other kind of property will be, and that if his bill be honestly carried out, they will be conveyed to the shambles and sold by the agent of the Government of the United States at public auction, and the proceeds of the sale placed in the Treasury of the United States, to help defray the expenses of the war. I am supposing that both his bills do not pass. I believe he is himself hopeless of the passage of the second bill, but thinks he will get the first bill through. Each bill stands on its own merits. They are to be voted on separately; and I am supposing what the effect of the policy will be if his bill in respect to slaves be rejected, and the bill I am discussing be passed. Suppose that those charged with the execution of this act, those who conduct these proceedings *in rem*, should decide that slaves are property, they will be obliged, if they deem the law constitutional, to order their sale as they do that of other property. But if they concur in the opinion of the distinguished gentleman from Massachusetts, that there can be no property in man; that a slave is a person, not a chattel; that he is not one in whom property can be held, then how will it be? If he be not property, he is a person responsible for his actions to his God, his country, and the law. He can commit the crime of treason as much as any other individual can commit it. If he has been employed by the rebels; if he has been made to aid rebellion; to further its objects or purposes in any way that may be called levying war against the United States, or giving aid and comfort to the enemy, then he is guilty of the crime of treason against the United States, and can be arraigned, tried, convicted and executed for it. This view of the case cannot be met by the assertion that he acted under duress, that he was obliged to obey his master, and that by the laws of Alabama or any other southern State, if his master ordered him to commit a treasonable act, he could not refuse obedience. He is prevented from setting up that defense, because a minor, who is supposed by law to be under the influence and control of his parents and guardian, as the slave is under the control and influence of his master, can commit the crime of treason, and may be punished for it.

This view of the subject, Mr. Speaker, may not cause the gentleman from Massachusetts to have much objection to this bill, and may not enlist against it many ultra gentlemen on that side of the House. I know that this slavery question embarrasses them very much at this time; and perhaps when my friend finds that he can, by a proceeding *in rem* or in any other way, have these slaves tried, convicted, and executed for treason, he might consider that the most expeditious way of getting rid of slavery in the southern States.

But, Mr. Speaker, I do not suppose that the gentleman from Massachusetts contemplates anything of that sort. I believe, however, that there are a large number of gentlemen on that side of the House who advocate bills for the confiscation of the property of rebels, not because they want to replenish the Treasury of the United States, not because they want to punish those engaged in rebellion against the Government of the United States, not because of any enormous conception they have been induced to entertain of the crime of treason and the propriety of punishing it, but they have been induced to advocate these bills for the confiscation of the estates of rebels of the South in order to get rid of the institution of slavery. I know that is their object. They have acknowledged it to me in

conversation. They have said to me repeatedly that were it not for the fact that they regarded this as a potent agency for emancipation, they would oppose confiscation. That is their avowed and only purpose. And in view of that fact, I want for a few moments to call the attention of those gentlemen to what they have said and pledged upon this subject. I ask them if they have not, in the Congress of the United States, pledged themselves to the belief that neither Congress or the free States have any power over the institution of slavery in the States where it exists by law?

It is not necessary for me to go back to the various acts and resolutions that corroborate this assertion of mine. I allude to the fact, intending to insert in my printed remarks the resolution offered by the distinguished gentleman from Ohio, now a Senator of the United States, in the last Congress—I mean Mr. JOHN SHERMAN. And I will add that no speech was made during that Congress, no resolution was offered upon the subject of slavery at all, that did not reiterate and declare that neither Congress nor the free States of this Union had any right, either directly or indirectly, to interfere with slavery where it exists by law. And I tell you that, when I went home from the Congress of the United States, and engaged in that arduous struggle in which I went upon the stump for the Union and the Constitution, and against the rebellion in the southern States, there was no argument that I used in that canvass with more effect than the solemn pledge repeatedly made by members of the Republican party on the floor of this House that in no instance would they be induced, either through the agency of Congress or any other agency, to interfere with slavery in the States where it existed.

The people of my State had been taught by demagogues, by advocates of the rebellion there, to believe that the northern States were the sworn enemies of their rights and their institutions. I had been with you, I had mingled with you freely in social intercourse, and here in this Hall, and had everywhere received the assurance and was led to believe that in no instance would you be guilty of such inference. I assured the people of Kentucky of that fact. I assured them that they and their institutions and their rights were as sacred and as secure under the domination of the Republican party as they had ever been. I told the people of Kentucky, as I was told by you in this House, in every speech made by Republicans upon this floor, and by every vote given by them, that all they intended to do upon the subject of slavery was to restrict it to where it existed, to prevent its further extension into the Territories of the United States, and that their intention in this respect was a matter of no moment to the people of the Southern States. I told them there was no Territory into which slavery could go if the unlimited rights were extended to go into any and every Territory in the possession of the United States. I told them that the Wilmot proviso had been enacted by God Almighty over all these Territories by connecting with them a climate and soil such as to prohibit slavery as effectually as any enactment of Congress could do. I said to them that you were willing even not to go to the extent of inhibiting slavery by congressional enactment in any future Territory; and when you, Mr. Speaker, in the last Congress brought forward bills for the organization of every foot of territory owned by the people of the United States, you sedulously ignored the Wilmot proviso in those bills, and you did it for a purpose. You did it that it might stand a pledge to the South that you would not in any way interfere with the institution of slavery.

Well, sir, what will my people think at this time of your conduct in the face of all these solemn promises and pledges? I ask you that question in no spirit of passion; I ask the question, God knows, with profound humiliation and sorrow. I ask you, were you in the place of our people, how you would regard the legislation of the present Congress, how you would regard these confiscation bills, in the light of the most solemn pledges, protestations, and promises made in every speech and in every resolution of the last Congress? Have you kept your sworn faith? Have you observed your solemn pledges and promises? I am not here to utter words of crimination or reflection. I am here to ask from my place upon this floor the simple question, if you were in our place, in the place of our people, and we in yours, would you regard us as having carried out the solemn pledges we had made?

I know the gentleman from Ohio over the way [Mr. BINGHAM] will take this view of the question. The gentleman was, perhaps, the only one on that side of the House who, in view of the great events that, in his mind, were speedily to be accomplished, stood out against the resolution of JOHN SHERMAN, and pointed out to those men who advocated and passed it what would be the consequence of its passage. I do not think the distinguished gentleman from Ohio voted for the resolution.

Mr. BINGHAM. Will the gentleman allow me to make this remark? I thought that resolution was unfair to ourselves and unfair to the people of the South. I refused to vote for the resolution as it was introduced and passed on motion of the gentleman from New York, [Mr. Palmer.] I rose in my place to record my vote against it, but my colleague from the Mansfield district asked me to withhold my vote, saying that we would reconsider the resolution and pass another in its place which would not be objectionable. My colleague did introduce a substitute for the resolution, which was passed. When he introduced it, I asked him, as a matter of fairness, that I should be permitted to submit an amendment, to insert these four words: "in time of peace," but he refused, and the resolution was passed under the previous question.

Mr. MALLORY. Yes, sir; and no other gentleman in the whole Republican party in the House took the same view as my distinguished friend from Ohio. That is precisely as I want the fact to go upon record. There was no other gentleman upon the floor of this House to support the gentleman from Ohio in the qualification that the declaration was only intended to be binding in time of peace. He asked them to except times of war, and they refused to do it.

Mr. WADSWORTH. And that vote was taken, I think, on the 9th day of February, when seven States had already seceded from the Union.

Mr. MALLORY. I was aware of that fact, and I am obliged to my colleague for stating it. There was then not war, not actual war, but there was a state of hostilities; and there should have been war. If I had been President of the United States I would have used all the power of the Government to have crushed out this wicked rebellion. In my judgment, nothing less than treason in the Administration prevented the existence, at that time, of an actual state of war. I am not sure, upon reflection, but war had actually commenced—I think the Star of the West had been fired on prior to that time by the rebels in Charleston harbor, and that was an act of war.

Mr. Speaker, I have heard it charged over and over again upon the other side of the Hall that slavery is the cause of this war. To this charge I

beg here to enter my most solemn protest and denial. Slavery *per se* is not the cause of this war. I admit that this war has been brought on by the use made of the institution of slavery both at the South and at the North. I admit that this institution of slavery, this right of property in slaves, has been seized by fanatics and madmen, by scoundrels and villains, both in the North and in the South, for the destruction of this Government.

Sir, if it is true that the use made of the institution of slavery brought on this war, is that any reason why it should be exterminated? If it be, is it not equally logical to argue that anything else that *might have been* the cause of this war—anything which, from the history of our country, we are forced to the conclusion could have been easily made the cause of rebellion or war—ought also to be abolished and exterminated? Do not you know that in 1832 South Carolina was upon the eve of occupying the position she occupies now—a position of rebellion against the Government of the United States—because of your tariff laws, and your restrictions upon free trade? Why not, then, abolish the tariff system, and declare by solemn enactment that free trade shall be the permanent policy of this Government, because a tariff may be made the cause of a rebellion? In view of the fact that the State of the distinguished gentleman before me [Mr. THOMAS, of Massachusetts,] was once on the eve of a rebellion against the Government of the United States, and did take some steps in that direction, because restrictions were laid upon commerce, why not say that commerce, because it may be the cause of a rebellion, shall be abolished? Why not say, because we intend that the country shall be safe in the future, because we intend that nothing shall be left which can possibly be used hereafter to incite rebellion and treason, therefore we will abolish commerce.

Is not that argument as logical and as legitimate as that you must abolish slavery because slavery may be the cause of war? [A VOICE. The whisky rebellion.] My friend says the whisky rebellion. Yes, sir, whisky has been the cause of rebellion, yet did you ever hear the enemies of that agent of mischief, as it is called by many, propose its destruction for that cause? I have never seen that that was assigned as a reason for its annihilation by the advocates of the "Maine law." I would not lay violent hands on whisky without constitutional warrant. I would say to the gentleman from New York, [Mr. LANSING,] and the gentleman from Massachusetts, [Mr. ELIOT,] who have enlarged upon this subject, that even religion has caused more wars and turmoils than any one other subject, and, according to their theory, we ought, by solemn enactment, to abolish the Christian religion.

Now, I am no propagandist of slavery; I am the owner of slaves, and the descendant of men who, as far back as I can trace them in America, were the owners of slaves, and I have made the declaration upon this floor that the condition of slavery is the very best condition in which you can place the African race. That is my deliberate conviction. I mean here in the United States of America, and in those States where slavery exists.

I repeat, I am no slavery propagandist. I will never consent to *impose* slavery on an unwilling people. I have said on a former occasion, and repeat here, that if I believed that slavery was inconsistent with the enjoyment of constitutional freedom, I would oppose slavery, and strive to persuade the people of my State to "wipe it out." But I said then, as I assert now, that there was no such incompatibility. Slavery existed at the

time the great principles of political liberty were established and put into practice by the adoption of the Constitution of the United States. Those great rights and slavery have coexisted ever since, and can continue to co-exist forever. The interference with it by Congress in States where it exists is in violation and destructive of all those great rights.

My conviction is that when these gentlemen shall have worked out their crusade, when they shall have accomplished their object by confiscation and emancipation, by all and every means, constitutional and unconstitutional, under the plea of necessity, they will find themselves in a predicament harder to extricate themselves from than that in which they now are. What do you intend to do with the slaves when they are freed? Where will you give them a tarrying place? Do you expect to place them upon the lands of the South, where the climate is congenial to them, and where the soil yields those products in the cultivation of which their labor is peculiarly profitable? Do you intend to turn the three millions of slaves you may emancipate by this confiscation bill loose among the free whites of the southern States where they are now held in bondage? Do you intend, by a course like this, to inaugurate scenes like those which occurred in Hayti some years ago, a war of extermination between the white and black races, until, after scenes of carnage and horror, that race is swept away—utterly extirpated? I hope not, for the sake of humanity. I hope there is not a man here so deaf to the calls of humanity, so indifferent to its claims, as to propose to inflict upon that race and the white race such a curse as that.

What, then, do you propose to do with them? Do you propose to let them go from the South, redeemed and regenerated as you say, into your free States of the North? Oh, no, you contemplate no such condition as that for them. You exclude them, as you would a leper, from your States. You say they shall not come among you and participate in that liberty of which you boast so much, and which you say should be extended to every human being. You make the emancipated slave a pariah and an outcast. You do not allow him the privileges of a freeman, though you here contend for such privileges for every human being. Deliver me from all such philanthropy and benevolence as that.

Mr. BINGHAM. Allow me to remind the gentleman that his remarks are too general; that he does injustice to a majority of the free States of this Union. A large majority of them do not exclude any African from them.

Mr. MALLORY. I ask the gentleman from Ohio if he is willing to throw open the doors of that great and noble State, that rich, fruitful, and productive State, to the three millions of slaves that may be liberated by these emancipation and confiscation bills?

Mr. BINGHAM. Its doors are open now.

Mr. WICKLIFFE. When did you repeal the law prohibiting them?

Mr. BINGHAM. As soon as we turned the Democratic party out of power. [Laughter.]

Mr. MALLORY. I know that the gentleman from Ohio does not intend that this exodus from the South shall find its way into the State of Ohio, as the Israelites did from Egypt into Palestine. No; he has too much regard for that State, and is too anxious that its fields shall be tilled by free white labor, and has too high a sense of the character and attributes of the Anglo-Saxon race, ever to bewilling that the blacks shall go there and be the competitors of the free white men of Ohio for the rewards of labor.

It may be that Ohio may now permit the entrance of free negroes occasionally, but when that immense swarm of negroes, worse than the swarm of locusts that destroyed Egypt, commences to pour itself over into that State, the doors will be closed against them, and he knows it.

Mr. BINGHAM. I desire to say to the gentleman that I have no idea myself that under any possible pressure I will ever consent that any man born upon the soil of this Republic, by any vote or word of mine, shall be excluded from the limits of any State, my own included.

Mr. MALLORY. I learn from that that the gentleman is an exception, for that is not the sentiment which prevails among those with whom he is acting. That is not the character of most of these philanthropists and humanitarians.

Mr. Cox. I will say, too, that the sentiment of my colleague is not the sentiment of the people of Ohio; and that as soon as they have a chance to restore the Democratic party they will keep out the blacks and prevent their competing with white labor.

Mr. BINGHAM. I have no doubt of that; but it will be a good while after this before they will have the power.

Mr. MALLORY. Having obtained from the gentleman from Ohio an expression of humanity and benevolence for which I was not unprepared, let me go further, and ask him if he is willing to grant to this horde of blacks let loose from the Southern States, free ingress into Ohio, and bestow upon them all the rights of free white citizens, the rights and privileges and attributes of American freemen? Will he allow them to be judges, and members of the Legislature, and members of Congress and Senators from Ohio?

Mr. BINGHAM. I am ready to answer that question. I answered it once before, I thought, to the satisfaction of the gentleman's venerable colleague (Mr. WICKLIFFE.) I said then, what every gentleman in this House knows right well, that political privileges, among which is the privilege of the elective franchise, belong exclusively and necessarily, under every form of government beneath the sun where it is exercised, to the acting majority, and whenever it accords with the popular sentiment and will, and not before, they may be extended to either black citizens of the United States or any other class of citizens of the United States now excluded from the elective franchise. The fundamental law of the State of Ohio excludes the entertainment of that idea by the citizen, because it limits the elective franchise to white persons. I would prefer that the limitation had not been put there, knowing, as I do, that an overwhelming majority of the men who wrought out our independence scorned to put it into the first charter of the American Government, and, if I recollect aright, by the unanimous vote of the Representatives of eight States, to the vote of the Representatives of two of the smallest in the Confederacy.

Mr. MALLORY. I am obliged to the gentleman from Ohio for his answer. He says that this whole matter to which I have called his attention is to be disposed of by the majority of the white men.

(Here the hammer fell.)

Mr. MALLORY. I hope I shall be permitted to proceed for a few minutes longer.

Mr. BINGHAM. I hope so.

Mr. MALLORY. I am always willing to extend the same privilege to others, and have never objected to it.

The SPEAKER. If there is no objection, the gentleman will proceed.
There was no objection.

Mr. MALLORY. In response to what has fallen from the lips of the gentleman from Ohio, inasmuch as the majority of the people of his State have control of this matter, and inasmuch as he is a great leader in that State, for which leadership he is doubtless qualified by his brilliant talents and his profound learning, I wish to ask him if he will use his great and powerful influence in Ohio so to guide and control that majority as to cause it in its legislative supremacy to concede to the poor liberated Africans these great blessings, the right to hold office in the State of Ohio under its constitution, and the right to vote.

Mr. BINGHAM. The gentleman does me honor overmuch in assuming that I have any great amount of influence among men; but in answer to his question I am very free to say that I do not undertake, according to my own judgment, to accomplish anything except in its right time and in its right season. I do claim, however, for myself, and I have never hesitated to say so, that it is the duty of the majority, in so far as may accord with their own sentiment of the public safety, to extend the elective franchise to all natural-born citizens, and to all naturalized citizens who pay taxes, and are resident within the State; and so the gentleman has my answer.

Mr. MALLORY. Well, his answer is oracular.

Mr. BINGHAM. It may be oracular.

Mr. MALLORY. He told us without hesitation that he would throw open the doors of Ohio to the blacks; he told us that he had no hesitation in saying that the matter of admitting them to vote and hold office depended on the will of the majority; but when I come to the other and more serious question, we have the answer which the House has heard, and which I will not repeat.

Mr. BINGHAM. The gentleman will pardon me for making this suggestion, that in what I have already said I do not recognize the right of the majority to expel any natural-born citizen from any rood of the Republic, or to deprive him of his right to live there, to work there, and to enjoy the fruits of his own toil; but I do recognize the right of the majority, and I have so said before, to limit and restrain the exercise of political privileges, among which is the right of suffrage.

Mr. MALLORY. Then I understand that the gentleman will not say that he would advise the majority to do at this time in relation to this matter. Now, I think it is very clear, whatever may be said by the gentleman, that this class of persons who are to be liberated in the slave States of the South by these laws are not to be admitted, in a great measure at least, into the free States of the North. Two thirds, if not three fourths or four fifths of those States, will exclude them. Now, when you set three millions of men free by your solemn enactment, you are bound by every consideration of justice and humanity to provide for them. If you do not do it, I scorn and detest your humanity. You must provide for these people if you free them. How will you do it? Will you colonize them? Have you, gentlemen, who know that the people of this country are staggering now under the enormous burdens imposed upon them by this terrible and necessary war, ever reflected upon the immense accumulation of taxation you will have to impose upon your constituents if you undertake to colonize and support negroes? If you liberate them, you are bound by every consideration of duty and common honesty to support and provide for them. It is a low estimate to say that it will cost \$400 apiece to purchase territo-

ry for them, to transport them to it and colonize them there, and to support them until they are able to support themselves. Thus you will impose a debt of \$1,200,000,000 upon this already overburdened nation.—Are you willing to go home and face this responsibility before your people. Are you willing to go home and say to those who sent you here, “we have taken three millions of happy and contented slaves, who were in the most proper position in which they could be placed by human laws, and conferred upon them the great and inestimable blessing of freedom, and in order not to let these miserable creatures starve and perish in our land, we have determined to tax you to the amount of \$1,200,000,000 to colonize and support them?” I would not like to go to my people and tell them that I proposed to make them share in such a burden. I would not be welcomed with the declaration, “Well done, good and faithful servant;” they would repel me from their confidence and trust.

Mr. Speaker, I heard the other day of distinguished philanthropist on this floor, one of those gentlemen who are strong advocates of these humanitarian schemes, one of those who believe in the equality of the white and black races, one of those who believe that one of the greatest boons ever extended to any people by any legislative body in the world was that tendered by the resolution which was passed a short time since in the offer to those States which will emancipate their slaves of remuneration for the loss and inconvenience incurred by that emancipation; a friend of mine asked him if he was willing to go home and tell his people that he would tax them to raise the money necessary to remunerate the slaveholders: “No, sir,” said he, “I will do no such thing; we do not contemplate any such thing; in my country, when we are about to build a road, and it becomes necessary to ascertain the damage a man may sustain from having the road run through his land, the rule we adopt is to make a jury take an estimate of the injury he will suffer by the road occupying his land, and of the benefit he will derive from its passage through his land, and have the balance struck on either side. “I do not think,” said he, “that there exists a man who would not say that a slave State was more benefited than injured by the abolition of slavery, so that, instead of paying them for it, they would have to pay us.”

My friend (Mr. WADSWORTH) said some time ago that there were two kinds of faith, that good old honest faith which our fathers gave and observed, and that other kind of faith which among the Romans became proverbial and infamous—Punic faith. I leave the House to say which kind would be practiced by those who hold this doctrine.

Mr. Speaker, I will only add, in conclusion, that I believe that, without forced construction, ample power can be derived from the Constitution to put down this rebellion. I believe, sir, that if for any purposes you violate that instrument in its plain teachings; if you exercise powers that are *clearly* not granted, or usurp those that are certainly prohibited, you add incalculably to the difficulty and complication of our position. I protest against such usurpation. I do it not as the defender and advocate of the rebel, who has no right to set up claim under the Constitution and laws of a Government against which he has impiously raised his arm for its destruction; but I do it in my *own* right, and in defence of the rights of my loyal constituents; and in defence of the rights of millions of loyal freemen throughout the Union, I demand that you redeem the solemn pledge you made the country and the world, by which you recruited an army of more than six hundred thousand *men*, not *subjects*, but *free, intelligent*

volunteers, and secured the free offer of hundreds of millions of the nation's treasure. In that pledge you solemnly resolve :

"That the present deplorable civil war has been forced upon the country by the disunionists of the Southern States, now in arms against the constitutional Government, and in arms around the capital ; that in this national emergency, Congress, banishing all feelings of mere passion or resentment, will recollect only its duty to the whole country ; that this war is not waged on their part in any spirit of oppression, or for any purpose of conquest or subjugation, or purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the *supremacy* of the Constitution, and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired ; and that as soon as these objects are accomplished the war ought to cease."

Redeem this, and dark as the prospect now is, the bright morning of a glori-
ous future, one of peace and concord, of prosperity and power, such as no other nation has ever known, will speedily break on us. Disregard it, violate it, and we plunge into a fathomless abyss, from whose dark depths no human vision can see the way of extrication.

TOWERS, Printers.

LIBRARY OF CONGRESS



0 013 701 762 3

